

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF WEST VIRGINIA

JAMES ZACKARY, III

Plaintiff,

v.

Civil Action No. 1:18-CV-143  
(Judge Kleeh)

UNITED STATES OF AMERICA;  
FEDERAL BUREAU OF PRISONS;  
LT. JOHN DOE; LT. COOK; LT. HENDERSON;  
LT. BOATRIGHT; NURSE JANE DOE; NURSE PUSHA;  
P.A. MYERS; JOHN DOE, SHU Officer #1; and JOHN DOE,  
SHU Officer #2,

Defendants.

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STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE OF  
FEDERAL TORT CLAIMS ACT CLAIMS PURSUANT TO 28 U.S.C. § 2677

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It is hereby stipulated by and between the undersigned plaintiff, *pro se*, (meaning any person, other than the defendant and the attorneys, signing this agreement, whether or not a party to this civil action), and the United States of America, as follows:

1. The parties do hereby agree to settle and compromise each and every claim of any kind, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the above-captioned action under the terms and conditions set forth in this Settlement Agreement.<sup>1</sup>

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<sup>1</sup> Plaintiff James Zackary, III filed this action alleging both a tort claim against the United States of America pursuant to the Federal Tort Claims Act ("FTCA") and a constitutional civil rights lawsuit for money damages against government employees pursuant to *Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). On October 2, 2019, this Court entered an Order (ECF No. 39) directing Plaintiff to proceed only upon the FTCA claim as resolution of it on the merits will resolve the *Bivens* action. The settlement and compromise of this FTCA claim will forever resolve Plaintiff's *Bivens* claim, as well as every other claim of any kind, whether known (2011 Edition)

2. The United States of America agrees to pay the sum of **Fifty Thousand Dollars (\$50,000.00)** which sum shall be in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the consequences thereof, resulting, and to result, from the subject matter of this settlement, including any claims for wrongful death, for which plaintiff or his guardians, heirs, executors, administrators, or assigns, and each of them, now have or may hereafter acquire against the United States of America, its agents, servants, and employees.

3. Plaintiff and his guardians, heirs, executors, administrators or assigns hereby agree to accept the sums set forth in this Stipulation of Compromise Settlement in full settlement, satisfaction, and release of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, including claims for wrongful death, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the consequences thereof which they may have or hereafter acquire against the United States of America, its agents, servants and employees on account of the same subject matter that gave rise to the above-captioned action, including any future claim or lawsuit of any kind or type whatsoever, whether known or unknown, and whether for compensatory or exemplary damages. Plaintiff and his guardians, heirs, executors, administrators or assigns further agree to reimburse, indemnify and hold harmless the United States of America, its agents, servants, and employees from and against any and all such causes of action, claims, liens, rights, or subrogated or

contribution interests incident to or resulting from further litigation or the prosecution of claims by plaintiff or his guardians, heirs, executors, administrators or assigns against any third party or against the United States, including claims for wrongful death.


4. This stipulation for compromise settlement is not, is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of the United States, its agents, servants, or employees, and it is specifically denied that they are liable to the plaintiff. This settlement is entered into by all parties for the purpose of compromising disputed claims under the Federal Tort Claims Act and avoiding the expenses and risks of further litigation.

5. It is also agreed, by and among the parties, that the respective parties will each bear their own costs, fees, and expenses and that any attorney's fees owed by the plaintiff will be paid out of the settlement amount and not in addition thereto.

6. It is also understood by and among the parties that pursuant to Title 28, United States Code, Section 2678, attorney's fees for services rendered in connection with this action shall not exceed 25 per centum of the amount of the compromise settlement.

7. The persons signing this Settlement Agreement warrant and represent that they possess full authority to bind the persons on whose behalf they are signing to the terms of the settlement. In the event any plaintiff is a minor or a legally incompetent adult, the plaintiff must obtain Court approval of the settlement at their expense. Plaintiff agrees to obtain such approval in a timely manner: time being of the essence. Plaintiff further agrees that the United States may void this settlement at its option in the event such approval is not obtained in a timely manner. In the event plaintiff fails to obtain such Court approval, the entire Stipulation For Compromise Settlement And Release and the compromise settlement are null and void.

8. Payment of the settlement amount will be made by government check through Inmate Trust Fund, at the following address:

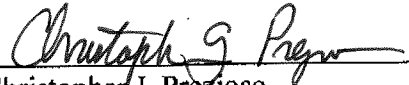
Federal Bureau of Prisons  
James Zackary, Reg. No. 19313-075  


The parties agree that dismissal of the above-captioned action will be made in its entirety with prejudice, with each party bearing its own fees, costs, and expenses.

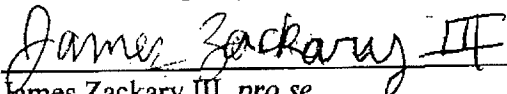
9. The parties agree that this Stipulation for Compromise Settlement and Release, including all the terms and conditions of this compromise settlement and any additional agreements relating thereto, may be made public in their entirety, and the plaintiff expressly consents to such release and disclosure pursuant to 5 U.S.C. § 552a(b).

10. It is contemplated that this Stipulation may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, shall be deemed to be one document.

Executed this 10 day of February, 2020.

  
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Christopher J. Prezioso  
Attorney for Defendant,  
United States of America

Executed this 6 day of February, 2020.

  
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James Zackary III, *pro se*  
Register Number 19313-075